United States Court of Appeals for the Second Circuit



APPELLEE'S BRIEF AND APPENDIX

74-2572

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To be argued by Thomas F. Maxwell, Jr.

UNITED STATES COURT OF APPEALS

For The Second Circuit

Docket No. 74-2572

United States of America,

Appellee,

v.

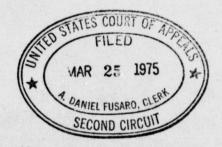
Alphonse Johnson,

Appellant.

On Appeal from the United States District Court

For the District of Connecticut

BRIEF AND APPENDIX FOR THE APPELLEE



Peter C. Dorsey United States Attorney District of Connecticut Bridgeport, Connecticut 06603

Thomas F. Maxwell, Jr. Assistant United States Attorney

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Appellee,

v.

Alphonse Johnson,

Appellant.

BRIEF FOR THE APPELLEE

Statement of the Case

This is an appeal from a judgment of the District Court, (Zampano, J.), entered October 23, 1974, denying appellant Johnson's <u>pro se</u> application for relief under 18 U.S.C. § 2255. Judge Zampano's unreported decision is reproduced in appelle's appendix, (13a). Johnson sought to vacate the sentence imposed upon him in 1972 following his conviction for bank robbery on the grounds that the trial judge, Judge Zampano, failed to make an affirmative, <u>explicit</u> finding that Johnson would not derive

a benefit from treatment under the Youth Correction Act, 18 U.S.C. § 5010(d). The appellant filed a notice of appeal and the District Court granted leave to appeal in forma pauperis.

STATUTES INVOLVED

Title 18, United States Code § 4209. Young adult offenders

In the case of a defendant who has attained his twenty-second birthday but has not attained his twenty-sixth birthday at the time of conviction, if, after taking into consideration the previous record of the defendant as to delinquency or criminal experience, his social background, capabilities, mental and physical health, and such other factors as may be considered pertinent, the court finds that there is reasonable grounds to believe that the defendant will benefit from the treatment provided under the Federal Youth Corrections Act (18, U.S.C. Chap. 402) sentence may be imposed pursuant to the provisions of such act.

Added Pub.L. 85-752, § 4, Aug. 25, 1958, 72 Stat. 846.

As used in this chapter-

- . . . (e) "Youth offender" means a person under the age of twenty-two years at the time of conviction; . . . \$ 5010. Sentence
- (a) If the court is of the opinion that the youth offender does not need commitment, it may suspend the imposition or execution of sentence and place the youth offender on probation.
- (b) If the court shall find that a convicted person is a youth offender, and the offense is punishable by imprisonment under applicable provisions of law other than this subsection, the court may, in lieu of the penalty of imprisonment

otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision pursuant to this chapter until discharged by the Division as provided in section 5017(c) of this chapter; or

- (c) If the court shall find that the youth offender may not be able to derive maximum benefit from treatment by the Division prior to the expiration of six years from the date of conviction it may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision pursuant to this chapter for any further period that may be authorized by law for the offense or offenses of which he stands convicted or until discharged by the Division as provided in section 5017(d) of this chapter.
- (d) If the court shall find that the youth offender will not derive benefit from treatment under subsection (b) or (c), then the court may sentence the youth offender under any other applicable penalty provision.
- (e) If the court desires additional information as to whether a youth offender will derive benefit from treatment under subsections (b) or (c) it may order that he be committed to the custody of the Attorney General for observation and study at an appropriate classification center or agency. Within sixty days from the date of the order, or such additional period as the court may grant, the Division shall report to the court its findings. Added Sept. 30, 1950, c. 1115, § 2, 64 Stat. 1087.

QUESTION PRESENTED

Is the District Court required to make an explicit finding of "no benefit" when sentencing a young adult offender to an adult sentence?

STATEMENT OF FACTS

On April 19, 1971, a federal grand jury in New Haven,

Connecticut, returned an indictment (Criminal No. 12,963)

charging Alphonse Johnson and two co-defendants with 3 counts

each of violating the Federal Bank Robbery Act, 18 U.S.C.

\$ 2113(a), (b), and (d). Johnson and his co-defendants were

convicted of all three of the counts involving violation

of the Federal Bank Robbery Act on December 21, 1971. On

February 10, 1972, Judge Zampano, the trial judge, imposed

a 19-year prison sentence. See Johnson sentencing minutes (20a).

Johnson was 23 years of age when he was convicted.

^{1/} Johnson and his co-defendants were also indicted for conspiracy, 18 U.S.C. § 371, and violation of the 1968 Federal Gun Control Act, 26 U.S.C. § 5861(d) and 5871. These counts were withdrawn as to Johnson prior to the case's submission to the jury.

^{2/} Appellant Johnson's date of birth is December 12, 1948.

ARGUMENT

THE DISTRICT COURT WAS NOT REQUIRED TO MAKE AN EXPLICIT FINDING OF NO BENEFIT BEFORE IMPOSING AN ADULT SENTENCE ON JOHNSON.

Johnson claims that he was denied due process of law when he was given an adult sentence following his conviction for bank robbery. He claims that because of his age (23 years) he had a right to be sentenced under the Federal Youth Corrections Act pursuant to the provisions of the Young Adult Offender statute. In addition, Johnson claims that the Court erred when it neglected to state reasons for not sentencing him under the Youth Corrections Act.

Johnson's contentions in this regard are without merit. In order for the District Court to have sentenced Johnson pursuant to the Young Offender statute, the Court would have to have made an explicit finding that he (Johnson) would have benefited from the program.

In <u>United States</u> v. <u>Kaylor</u>, 491 F.2d 1133, 1137, (2d Cir. 1973) this court held that where the trial court is sentencing a "youth offender," it must make an explicit finding that the "youth offender" would derive <u>no benefit</u> from treatment under the Federal Youth Corrections Act

^{3/ 18} U.S.C. §5010.

^{5/} "Youth offender" is defined by 18 U.S.C. §5006(e) as a person under the age of 22 years at the time of conviction.

before imposing an adult sentence. On the other hand,

the court found that in the case of a young adult offender

the trial court must make an affirmative finding that the

offender would benefit from treatment before sentencing under

the Young Adult Offender statute. See United States v.

Wilson, 450 F.2d 495, 497 (4th Cir. 1971); United States v.

Waters, 437 F.2d 722, 724 (2d Cir. 1970). The Supreme

Court in Dorszynski v. United States, U.S.,

94 S.Ct. 3042, 3048 n.9 (1974) has also recognized that

persons convicted between the ages of 22 and 26 may be

sentenced for treatment under the Youth Corrections Act

only where the court finds that there are reasonable

grounds to believe the defendant will benefit from treatment

under the act.

In imposing its sentence on Johnson, the trial court took into account all appropriate factors, including his age, background, prior record, pre-sentence investigation, and the facts of the offense, and it imposed an adult sentence. Because of Johnson's age (23 years), the court was not required to state reasons for not imposing a sentence under the Youth Corrections Act. See Johnson's sentencing minutes (17a-20a).

Johnson received a legal and proper sentence from the District Court.

^{6/} Young adult offender is defined by 18 U.S.C. §4209 as a person who has attained his 22nd birthday but has not attained his 26th birthday at the time of conviction.

CONCLUSION

The appellant was not denied due process of law when an adult sentence was imposed upon him, and the sentence imposed by the District Court should be affirmed.

Respectfully submitted,

PETER C. DORSEY UNITED STATES ATTORNEY DISTRICT OF CONNECTICUT BRIDGEPORT, CONNECTICUT 06603

THOMAS F. MAXWELL, JR. ASSISTANT UNITED STATES ATTORNEY

CERTIFICATE OF SERVICE

This is to certify that 2 copies of the foregoing

Brief and Appendix for the Appellee has been forwarded this

/3** day of March, 1975, by certified mail, to Alphonse

Johnson, United States Penitentiary, Marion, Illinois.

THOMAS F. MAXWELL, JR.

ASSISTANT UNITED STATES ATTORNEY

APPENDIX

CRIMINAL DOCKET UNITED STATES DISTRICT COURT

THE UNITED STATES THE UNITED STATES Us. Stewart H. Jones, U. S. Attv. Thomas F. Maxell, Asst. USA ALPHONSE JUNES N. RUEUS HIGLEY. ALPHONSE JUNES N. RUEUS HIGLEY. ALPHONSE JUNES N. RUEUS HIGLEY. AND HOUR HIGLEY. AND HOUR HAVEN, Conn. Alk/A Sonny Higley and DAVID J. WHITE For Defendant: HIGLEY: HIGLEY: HIGLEY: HIGLEY: New Haven, conn. 152 Temple Str. Now Haven, conn. (777-7615) Robert C, Mitto (Appt.) The What St., West Haven, Conn. Cerald Parell (Approinted) BO NAME OR NECL PROPELLY JS. 2 mailed Clerk JS. 2 mailed Clerk JS. 3 mailed Clerk JS. 3 mailed Marshal Marshal Marshal Marshal Marshal DATE Sec. 2113(a) 2(a) 2(b) 2113(b) 2113(b) 213 (a) 213 (a) 224 (a) and (b) - count 1 - taking. DOWNSON-Cts. 1, 2, 3, 4, 8, 5, HIGLEY-Cts. 1, 2, 3, 4, 8, 5, HIGLEY-Cts. 1, 2, 3, 4, 8, 6, MITE-Cts. 1, 2, 3	D. C. Form No. 10	00 Rev.							3	
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5871- cts. 5,6 and 7- possessing firearm which was not registered to him. Defendant Johnson is in New Jersey. Def. White is in New Jersey/Def.Higley is in State custody at Yale New Haven Hospital. Bench Warrant may issue for each defendant with bonds set at \$50,000.00 with corporate surety. (Timbers, J.) m-4/20/71. Bond Order endorsement on reverse side of Indictment. Bench Warrants issued for all 3 defendants, in duplicate, and with certified copy of Indictment handed U.S. Marshal for service. 3/29 U.S. Magistrat'e papers filed, re: Def. White-Record of pro-			angerous weapon: 18 USC 371- count 4-conspiracy to violate							
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Def.Higley is in State custody at Yale New Haven Hospital. Bench Warrant may issue for each defendant with bonds set at \$50.000.00 with corporate surety. (Timbers, J.) m-4/20/71. Bond Order endorsement on reverse side of Indictment. 4/20 Bench Warrants issued for all 3 defendants, in duplicate, and with certified copy of Indictment handed U.S. Marshal for service. 3/29 U.S. Magistrat'e papers filed, re: Def. White-Record of pro-			6 and 7- possessing firearm which was not registered to							
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with corporate surety. (Timbers, J.) m-4/20/71. Bond Order endorsement on reverse side of Indictment. 4/20 Bench Warrants issued for all 3 defendants, in duplicate, and with certified copy of Indictment handed U.S. Marshal for service. 3/29 U.S. Magistrat'e papers filed, re: Def. White- Record of pro-			sue for each	def	endar	nt with	bonds set a	et \$50.0	00.00	
Bench Warrants issued for all 3 defendants, in duplicate, and with certified copy of Indictment handed U.S. Marshal for service. 3/29 U.S. Magistrat'e papers filed, re: Def.White- Record of pro-			surety. (Tim	bers	,J.)	m-4/20	71. Bond Or	der end	orsement	
with certified copy of Indictment handed U.S. Marshal for service. 3/29 U.S. Magistrat'e papers filed, re: Def.White- Record of pro-										
3/29 U.S. Magistrat'e papers filed, re: Def.White- Record of pro-	4/20	Bench War	rants issued	for	all	3 defer	ndants, in d	luplicat	e, and	
ceedings, Coby of Warrent of Arrest Coby of Complaint (UVER)	_3/29									
		reedings, Coby	of Warrant	OT A	rres	CODY	or complaint		VER)	

DATE 1971 ·	PROCEEDINGS
3/29 (c0	ntinued)- and affidavft of Emmet J. Michaels.
3/29	US. Magistrate's papers filed re: Def. HigleyRecord of proceed
	ings, Warrant of Arrest, Complaint and Affidavit of Emmet J. Michaels.
4/27 .	RUFUS HIGLEY: U. S. Magistrate's papers, filed. Record of Proceedings, Warrant
4/2/	for Arrest, Temporary Commitment.
4/27	RUFUS HIGLEY: CJA Form 1, filed by U. S. Magistrate, appointing Hugh F. Keefe,
4/2/	Esq., to represent defendant.
2/20	ALPHONSE JOHNSON: U. S. Magistrate's papers, filed: Record of Proceedings; Warran
3/29	of Arrest; Complaint.
4/26	JOHNSON: Marshal's Return Showing Service, filed: Wamant of Removal from District
4/20	of New Jersey.
426	WHITE: Marshal's Return Showing Service, filed: Warrant of Removal from District
420	of New Jersey.
5/4	JOHNSON: Motion to Suppress Evidence, filed by defendant, pro se.
5/4	JOHNSON: Demand to be Returned for Trial; Motion to Dismiss; Demand For Trial;
	Motion to Appoint Counsel, filed by defendant, pro se.
5/4	CJA Form 2, in blank, mailed to defendant Johnson.
5/12	HIGLEY: Magistrate's Temporary Commitment, with Marshal's Return of Service,
	filed.
5/17	JOHNSON: Motion for a Speedy Trial, filed by defendant, pro se.
5/24	Court will appoint counsel over the objection of Mr. Johnson.
	Case continued.(Zampano,J.) m-5/24/71
5/24	Arraignment of Def. Higley OVER to June 14, 1971. Attorney Keefe
	to withdraw. James C. Whitney entered appearance for defendant Higley.
	(Zampano,J.) m-5/24/71.
5/24	Counsel to be appointed for Def. White. CJA Form 2 executed.
	(Zampano, J.) m-5/24/71.
5/21	Magistrate's Warrant of Arrest, Complaint and Affidavit of Emmet J. Michaels,
	filed re: Def. Higley.
5/24	JOHNSON: Hearing on defendant Johnson's (1) Pro Se Demand to be Returned for Tria
	Motions to Dismiss; Demand for Trial; Motion to Appoint Counsel (2) Pro Se Motion to
	Suppress Evidence and (3) Pro Se Motion for a Speedy Trial. Motions over until counsel
	is appointed for Mr. Johnson. Zampano, J. m-5/2471.
5/26	CJA Form 2, filed appointing Gerald Farrell to represent Def. Johnson.
	(7ampana I) m-5/26/7)
5/26	CJA Form 2 filed appointing Robert C. Mirto to represent Def. White. (Zampano, J.)
	m-5/26/71.
6/1	Appearance of Robert C. Mirto, Esq., entered for defendant WHITE.
6/1	WHITE: Marshal's return showing service, filed. Warrant for Arrest.
6/1	1 11 - I have about a send a still Hamsont for Amost
6/1 6/8	JOHNSON: Marshal's return showing service, filed. Warrant for Affect. JOHNSON: Motion for Discovery and Inspection, filed by defendant.
6/8	JOHNSON: Motion to Sever, filed by defendant.
6/8	JOHNSON: Motion to Order the Government to Transcribe and Prepare Stenographic
0,0	Minutes of Grand Jury Proceedings and Testimony Other than Deliberations, filed by
	defendant.
6/8	JOHNSON: Motion for Bill of Particulars, filed by defendant.
6/8	JOHNSON: Motion to Reduce Bond and for a Speedy Trial, filed by defendant.
	BOHNSON: Government's Response to Pre-Trial Motions of Defendant, filed.
6/11	JOHNSON: Motion to Supress filed by Defendant.
6/14	WHITE: PLEA - Plea of not guilty entered to Counts 1,2,3,4 and 7. Case continued
6/14	WRITE: FLEX - Flea of not guilty entered to counts 1,2,5,4 and 7. Case continued
	on same bond of \$50,000 with surety, for trial. Defendant allowed two weeks to file motions. Zampano, J. m-6/14/71.
6/1/	JOHNSON: PLEA - Plea of not guilty entered to Counts 1,2,3,4 and 5. Case continue
6/14	on same bond of \$50,000 with surety, for trial. Defendant allowed two weeks to file
	motions. Zampano, J. m-6/14/71.

DATE 1971	PROCEEDINGS
6/14	HIGLEY: PLEA - Plea of not guilty entered to Counts 1, 2,3,4 and 6. Case
	continued on same bond of \$50,000, with surety, for trial. Defendant has ten days
	to file motions. Zampano, J.m6/14/71.
6/14	All of Johnson's pending motions (Motions #1 thru 7) over to 6/28/71. Motion #8,
0/14	Defendant Johnson's Mation to Reduce Bond and for a Speedy Trial heard and decision
	reserved. Zampano, J. m-6/15/71.
6/17	JOHNSON: Government's Memorandum in Opposition to defendant's motion for
-0/1/	Reduction of Bond, filed.
6/24	HIGLEY: Motion for Reduction of Bail of Defendant Pursuant to Tile 18, U.S.C.
	3146(d), filed by defendant.
6/24	HIGLEY: Motion for Separate Trial, filed by defendant.
6/24	HIGHLEY: Motion for Production of all Evidence Favorable to the Defendant, filed
	by defendant.
6/24	HIGLEY: Motion to Order Grand Jury Minutes Transcribed, filed by defendant.
6/24	HIGLEY: Motion for Bill of Particulars, filed by defendant.
6/24	JOHNSON: Brief on Defendant's Motion for Reduction of Bond, filed.
6/24	JOHNSON: Ruling On Defendant's motion for Reduction of Bond, filed and entered.
	The Defendant's motion for reduction of bond is denied. Zampano, J. m-6/24/71.
	Copies mailed to counsel.
6/25	HIGLEY: Government's Memorandum in Opposition to Defendant's Motion for Reduction
	of Bond, filed.
6/25	HIGLEY: Government's Response to Defendant's Pre-Trial Motions, filed.
6/28	WHITE: Motion for Bill of Particulars, filed by defendant. (Noticed for 6/30/71)
6/28	WHITE: Motion for Separate Trial, filed by defendant. (Noticed for 6/30/71.)
6/28	WHITE: Motion for Production of Evidence Favorable to the Defendant, filed by
	defendant. (Noticed for 6/30/71.)
6/28	WHITE: Motion to Suppress Evidence, filed by defendant. (Noticed for 6/30/71.)
6/28	WHITE: Adoption of All Motions of Codefendants, filed by defendant.
6/29	The same of the sa
6/30	WHITE: Government's Response to Defendant's Pre-Trial Motions, filed. All pending motions on EndgetZampano's calendar, this date, put over to
	July 12, 1971.
7/13	JOHNSON: After hearing in open court on 7/12/71, following endorsements on
	defendant's (1) Motion to Sever - continued to the fall. (2) Motion to Order the
	Government to Transcribe and Prepare Stenographic Minutes of Grand Jury Proceedings, et
	off, complied with. (3) Motion for Bill of Particulars - off, without prejudice.
	(4) Motion to Suppress - motion continued to time of trial. (5) Motion for Discovery
	and Inspection - off, by agreement. (6) Johnson's pro se motions re demand to be
	returned for trial; motion to dismiss; demand for trial; motion to appoint counsel -
	these pro se motions are moot. (7) Johnson's pro se moiton for a speedy trial -
	motion granted. Case to be placed at the top of the list for the fall session
	at Bridgeport or New Haven. Zampano, J. m-7/14/71. Copies mailed to all counsel.
7/13	HIGLEY: After hearing in open court on 7/12/71, following endorsements on
	defendant's (1) Motion for Reduction of Bail of Defendant pursuant to Title 18, USC
	3146(d) - motion off, without prejudice. (2) Motion for Separate Trial - motion off,
	without prejudice. (3) Motion for Production of all Evidence Favorable to the
	Defendant - motion off, without prejudice. (4) Motion to Order Grand Jury Minutes
	Transcribed - motion off, without prejudice. Zampano, J. m-7/14/71. Copies mailed to
	all counsel.
7/13	WHITE: After hearing in open court on 7/12/71, following endorsements on
	defendant's motion (1) for Bill of particulars - motion off, complied with by
	agreement. (2) Motion for Separate Trial - motion off, by agreement. (3) Motion for
	Production of Evidence Favorable to the Defendant - motion off, by agreement, complied
	with. (4) Motion to Suppress Evidence - motion over to time of trial. (5) Adoption
	of all Motion os CoDefendants - motion off, by agreement. Zampano, J. m-//14/71.
	Copies mailed to all counsel.

•	I
1971 ·	PROCEEDINGS
7/16	JOHNSON: U. S. Magistrate's papers, filed from District of New Jersey: Record
	of Proceedings, Warrant of Arrest, Complaint and Affidavit of Emmet J. Michaels.
7/16	WHITE: U. S. Magistrate's papers, filed from District of New Jersey: Record of Proceedings, Warrant of Arrest, Complaint and Affidavit of Emmet J. Michaels.
7/19	HIGLEY: CJA Form appointing James C. Whitney, Esq., to represent defendant,
	filed and entered. Zampano, J. m-7/19/71. Mr. Whitney replaces Atty Hugh F. Keefe.
	Copies distributed.
7/19	Cja Form 8, filed authorizing services of Joseph Montesi, Inc. for Def.
	Johnson. CJA Form 9 sent to Atty. Farrell along with copies of CJA 8 for
	Mr. Montesi to submit when his services have been rendered.
8/18	Motion For Determination of Mental Competency, filed by Def. Johnson'
	Attorney, Gerald Farrell.
8/17	Court Reporter's sound recording of Proceedings held on May 24,1971, filed.
	HICLEY: Arraign over: (Russell, R.).
	Court Reporter's sound recording of Proceedings held on May 24,1971, filed.
	JOHNSON: Hearing (Russell, R.)
	Court Reporter's sound recording of Proceedings held on June 14,1971, filed.
	HIGHEY: Plea: (Russell, R.). Court Reporter's sound recording of Proceedings held on May 24,1971, filed.
<u>.</u>	Court Reporter's sound recording of Proceedings no. d on May 24,1911, 11154
	WHITE: Counsel to Be appointed. (Russell, R.). Court Reporter's sound recording of Proceedings held on June 14,1971, filed.
	Court Reporter's sound recording of Proceedings read on State 14,1911, 111cd.
п п	JOHNSON: Plea: (Russell, R.).
	Court Reporter's Sound recording of Proceedings held on June 14,1971, filed.
0 /07	WHITE: Plea: (Russell, R.). Court Reporter's Notes of proceedings held on May 24, 1971, filed.
8/31	HIGLEY-continued (Russell, R.)
11	Court Reporter's Notes of proceedings held on May 24, 1971, filed.
	Defts-JOHNSON & WHITE (Russell, R.)
11	Court Reporter's Notes of proceedings held on June 14, 1971, filed
	All-Defendants-Pleas (Russell, R.)
11	Court Reporter's Notes of proceedings held on July 12, 1971, file
	TOHNSON et al (Russell, R.)
9/8	Order Appointing Psychiatrist for Mental Examination, filed and entered.
	Thomas C. Carey, J.D., appointed to examine defendant ALPHONSE JOHNSON and make a
	report of his findings to this Court (no date set). Blumenfeld, J. m-9/9/71. Copies mailed to counsel. One certified copy handed U. S. Marshal.
9/13	Defendant Johnson's Motion to Sever OVER by consent. ("ampano, J.)
	m-9/14/71. Court Reporter's Notes of proceedings held on September 13, 1971,
9/15	GOUTE REPORTER'S NOTES OF PROCEEDINGS METER ON DEPERMENT
9/21	filed. Motions (Russell, R.) DeftJohnson Motion for Substitution of Examining Physician Under Court's Order of August
- 3/21	25, 1971, filed by defendant JOHNSON. Order Substituting Psychiatrist for Mental
	Examination, filed and entered. Dr. John Donnelly substituted for Dr. Thomas C. Carey
	Zampano, J. m-9/21/71. Copies mailed to counsel and two certified copies handed to
	U. S. Marshal at New Haven.
9/27	Hearing on Defendant's (JOHNSON) Motion to Sever. Marked off, with leave to
	renew. Zampano, J. m-9/29/71.
9/28	On RCZ's Jury Assignment List - marked Ready No. 4. Zampano, J. m=9/29/71.
10/13	HIGLEY: Hearing held on defendant's Motion for Determination of Mental Competency Purs
	to Section 4244, Title 18, U.S. Code. Motion granted. Order to submitted by October
	14, 1971. Mr. Higley excused until mental examination is completed. Zampano, J.
	- 10/xs/71
10/18	WHITE: Motion for bill of particulars, filed by defendant.
10/18	WHITE: Motion to suppress evidence, filed by Defendant.
	(continued)

	DATE	PROCEEDINGS
	1971 .	
	10/26	WHITE: Hearing held on Defendant's (1) Motion to Suppress Evidence - over, to be
		heard with Motion to Suppress; (2) Motion for Bill of Particulars - denied except
		to the extent already answered by the Government to the Bill of Particulars filed
_		by counsel. Zampano, J. m-10/28/71.
	10/26	WHITE: Following endorsement on Defendant's pro se Motion for Bill of Particulars;
-		Denied except to the extent already answered by the Government to the Bill of
		Particulars filed by Mr. White's attorney. Zampano, J. m-10/29/71. Copies mailed to
		counsel.
	11/2	JOHNSON: Motion to Dismiss, filed by defendant.
	11/2	HIGLEY: Order Appointing Psychiatrist for Mental Examination, filed and entered.
		Charles W. McGuire, M.D. a psychiatrist at 186 Sherman Ave., New Haven, Conn. is
		appointed to examine defendant and report to this Court on or before November 10, 1971,
		his findings both as to defendant's mental condition and responsiblity at time of
		offense. Zampano, J. m-11/2/71. Copies mailed to counsel and two certified copies
		handed to U. S. Marshal at New Haven.
	11/23	JOHNSON: Motion for Meeting of Council and all Defendants, filed by defendant.
	11/26	Motion for Issuance of a Capias for CHESTER BORDEAUX, filed and So Ordered.
		Zampano, J. m-11/26/71.
	11/26	Capias issued against CHESTER BORDEAUX, and together with certified copy of
		same and two certified copies of Motion and Order, handed to U. S. Marshal at New
		Haven for service.
_	11/19	Marshal's return showing service, filed. Subpoena to Produce.
	11/19	Marshal's return showing service, filed. Subpoenas to Testify (2)
	11/29	Marshal's return showing service, filed. (3) Subpoenas to Produce.
_	11/29	Marshal's return showing sevice, filed. (10) Subpoenas to Testify.
	11/29	HIGLEY: Yale-New Haven Hospital Medical Record of defendant Higley, filed by
	11/30	Government at Bridgeport. JURY TRIAL COMMENCES: 55 Jurors present and administered voir dire oath. 12
		jurors and 2 alternates impannelled and sworn. 12:42 p.m. jury excused until
		Dec. 7, 1971 at 10:00 a.m. Court will hear motions in this case at 10:15 a.m. on
-		December 1, 1971. Zampano, J.m. 12/2/71.
_	12/1	
_		Psychiatric report of defendant HIGLEY filed.
	12/1	HIGLEY: HEARING held on defendant's (1) Oral Motion for Suppression of
_		Evidence; (2) Motion for Reduction of Bond; (3) Motion for Separate Trial - not pressed
_		at this time; (4) Motion for Production of Evidence - complete with; (5) Motion for
		Transcript of Grand Jury Proceedings - partially compled with, to be completed shortly;
-		(6) Oral Motion for Transfer of Mr. Higley to a Different Institution, Federal Correctional Institution at Danbury. JOHNSON: Hearing held on defendant's (1) Motion
		to Sever; (2) Motion to Suppress Evidence; (3) Motion to Dismiss; (4) Mr. Johnson's
-		pro se Motions for a Speedy Trial; To Suppress; For Bill of Particulars. Bill of
		Particulars has been ruled upon and counsel satisfied with compliance. WHITE: Hearing
_		held on defendant's (1) Motion under Brady - granted; (2) Motion for Bill of Particular
-		complied with; (3) Motion for Separate Trial; (4) Motion to Suppress Evidence -includ-
_		ing Motion to Suppress Photographic Identification; (5) Adoption of all Motions of
		co-defendants, including Motion for Speedy Trial; (6) Motion re Jury Selection System;
		(7) defendant's pro se Motions For Suppression of Evidence and Return of Personal
		Items; For Bill of Particulars - complied with; Challenging Indictment. Government is
	•	willing to return to defendant Higley all items seized and not to be used at trial
_		except the Marksman pistol, which is not to be returned at this time and not to be
_		used as trial. Govt has no items of defendant Johnson not to be used at trial. Govt
		does not have custody of defendant White's billfold, watch and gold band. Court
		Orders that if the Government has the billfold, watch and gold band, they shall be
		returned to defendant White. If the Government does not have those items and not
		control over them, they cannot be returned and the deft is to find out where they are.
		(over)

DATE .	PROCEEDINGS
	d) Government moves for permission to have Asst. U. S. Atty Bowman and Agent Emmet
	Michaels sit a counsel table. Granted. HIGLEY: Hearing on Motion to Suppress:
	Deft moves for all agents and Officers to be sequestered except Special Agent in
	Charge. Granted. Three government witnesses sworn and testified. Court Exhibits
	#1,2,3 and 4 marked for Ident. Atty Farrell moves for right of Attys Mirto and
	Farrell to cross-examine witness Riley. Decision reserved. 1:05 P.M. Court
	adjourned until Dec. 2, 171 at 10:00 A.M. Zampano, J. m-12/3/71.
12/1	Marshal's return showing service, filed. Subpoenas to testify (9)
12/1	Marshal's return showing service, filed. Subpoens ticket.
12/2	Continued Hearing on Motions: Higley's Motion to Suppress - One Government
11/1	Continued Hearing on Motions: Higley's Motion to Suppress - One Government witness sworn and testified. Govt. rests as to Higley's statements. Defendant Higley
	takes the stand on his own behalf. Deft. Ex. A, filed. Defendant rests as to Higley
	statements. Rebuttal by Government. Court Ex. 5, marked for Ident. JOHNSON: Motion
	to Supress photographic identification. Two Government witnesses sworn and testified.
	Court Ex. 6a thru 6e, marked for Ident. Defendant Higley's motion to transfer to
	Danbury, denied. 4:35 p.m. Court adjourned until 12/3/71. Zampano, J. m-12/6/71.
12/2	Court Reporter's transcript of proceeding sheld on 5/24/71, filed. (Russell, R.)
	(Arraignments)
12/2	Court Reporter's transcript of proceedings held on 12/1/71, filed. (Motions)
	(Russe!1, R.)
12/3	Continued Hearing on Motions: JOHNSON - Motion to Suppress. Attys Farrell and Wh
	move for defendants Higly and Johnson to remain out of courtroom. Defendants consent.
	Motion granted. Three Government witnesses sworn and testified. Court Ex. 7, filed.
	Court Ex. 6a thru 6e, admitted as full exhibits. Court Ex. 8,9,10,11,12, marked for
	Ident. Court Ex. 10,11 and 12 admitted as full exhibits. Government rests as to
	Johnson statements and money. 1:15 P.M. Court adjourned until 12/6/71 at 2:00 p.m.
	Zampano, J. m-12/6/71.
12/6	Continued Hearing on Motions: JOHNSON - Motion to Suppress. Defendant Johnson
	sworn and testified on his own behalf. Defendant rests on statements and money.
	Govt reopens issue of Higley custody. One Government witness sworn and testified.
	JOHNSON - Motion to Suppress on Photo Identification. One Government witness sworn
	and testified. Witness Cohen previously sworn resumes stand. Govt rests on Johnson
	identification of photo. Defendant rests, also. HIGLEY - Motion to Suppress on
	items seized. One Govt witness sworn and testified. 4:45 p.m. Court adjourned until
	Dec. 7, 1971 at 10:00 A.M. Zampano, J. m-12/8/71.
12/7	Continued Hearing on Motions: HIGLEY - Motion to Suppress on items seized.
	Govt moves for sequestration of witnesses for defendant. Mtion granted. Atty. Farrel
	moves for subpoena of witness. Motion granted. Govt witness Buffalo resumes stand
	for cross-examination. Defendant's Ex. B,C,D and E, filed. Deft. Ex. F, filed.
	Govt rests on seizure. Two defense witnesses sworn and testified. Govt moves that
	defendant turn over notes of witness. Motion denied. Deft rests on seizure. Motion
	to Suppress on gun pellets. Govt makes offer of proof. Evidence completed on this
	issue. WHITE: Motion to Suppress. Three Govt witnesses sworn and testified. Court
	Exhibits #15,16,17,18,19,20,21,22 adn 23, filed. Govt rests as to defendant White.
	Defendant White is sworn and testifies on his own behalf. Defendant rests. Deft
	argues motion challenging jury selection system. Motion denied, as to deft. White.
	Deft Higley argues motion for reduction of bond. Motion denied. Deft Johnson argues
	motion for speedy trial. Decision Reserved. Gott to submit chronology of events in
	this case from Johnson arrest to date of trial, within 3 days. Counsel make statements
	of legal claim and authority concerning each issue. Arguments to be heard on 12/8/71. 5:05 p.m. Court affourned until 12/8/71. Zampano, J. m-12/9/71.
12/7	Marshal's return showing service, filed. Subpoenas to testify 15
12/7	Marshal's return showing service, filed, Capias: Returned Unexect
	Marshal's return showing service, filed. Subpoena to Produce.
12/7	Marshal's return showing service, tiled, bubbelle

DATE 1971	PROCEEDINGS
12/10 .	Court Reporter's Transcript of Proceedings held on December 8, 1971, filed
12/8	at Bridgeport. (Russell, R.) Continued Hearing on Motions: Arguments by counsel, Higley statements Decision Reserved. Arguments by counsel on Johnson identification, Higley identification, Johnson statements and money, Higley-Search and
	seizure, Higley-pellets from let and White- statement and suticases seized. Defendant requests sequestration of witnesses. Granted.
	Statements. All other items- denied and evidence admissable. No ruling on gun pellets issue. Government has stated they will not be used.
	Motions for Speedy Trial - Decision reserved. Motions to Sever-OFF, with leave to renew. Jury trial continues: Court Exhibits 3501.
•	3502, 3503, 3504, 3505, 3506, marked. Jury of 12 and 2 alternates present. Five government witnesses sworn and testified. Government Exhibits 1
	and 3 marked for Identification. Government Exhibit 2, filed. Government Exhibits 1 and 3 admitted as Full exhibits. Court adjourned at 4:45 p.m. until 12/9/71 at 10:00 a.m. (Zampano, J.) m-12/13/71.
12/9	Jury trial continues: Jury of 12 and 2 alternates present. Seven Government witnesses sworn and testified. Govern. Exh. 4, filed.
	Govt. Exhibits, 5,6,7,8,9A-9E, 10A-10F, marked for Identification. Govt. Exhibits 5,6,7,9A-9E,10F,10C admitted as full exhibits. Def. Exh.
	A,B,C,D,E, marked for Identification. Defendant Exh. D admitted as full exhibit. Court admourned at 3:50 p.m. until 12/10/71 at 10:00 A.M. (Zampano,J.) m-12/13/1971.
12/10	Jury trial continues: Court rules on Higley statements (confessions) Def. objection to confessions sustained with leave for Govt. to renew.
	12 jurors and 2 alternates present. Three government witnesses sworn and testified. Govt. Exhibits 11,12A and 12B, 13,14,15A and 15B,16,17, 18,19,20,21A and 21B, marked for Identification. Govt. exhibits 11,10A and 10D, 12A and 12B, 19,20,16,17,18,13,14,15A and 15B,21A and 21B,
	admitted as full exhibits. Jury excused at 1:00 p.m. until12/13/71 at 10 A.M. Chronology re Alphonse Johnson, filed. (Zampano, J.) m-12/13/1971.
12/13	Jury trial continues: Attorney Mirto requests issuance of subpoenas Granted. Def. Motion for name of informant- denied; as to seizure of
	suitcases. Decision reserved. Jury of 12 and 2 alternates present. Five government witnesses sworn and testified. Government Exabits 22,23,24,25,26,27,28,29,30,21A thru 31E,32 8B, 33,34,35A,35B and 35C,
	marked for Identification. Government Exhibits 22,23, 24 thru 30, 31A,
13/13	Jury excused until 1:00 p.m. 12/14/1971. (Zampano.J.)m-12/15/1971. Lyons recalled to stand. Governt. Exhibits 36,27,39,40 and 41 marked
	39,40,41 and 33 admitted asfullexhibits. / Corre Exhibit 139,40,41 and 33 admitted asfullexhibits.
· .	Identification, during hearing on Motion to Suppress. Government and defense rest on Motion to Suppress. Motion to Suppress "in-court" identification denied. Jury returns to courtroom. Government rests at
	for Judgment of Acquittal. Def. Motion For Pisclosure of Informants
	mame- denied. Def. White moves for Judgment of Acquittal. Def. Higley moves for Judgment of Acquittal. Arguments heard. Denied as to Counts
	1,2,3, and 7; Counts 4 and 5 withdrawn; Decision reserved as to Count 6. Court adjourned at 4:50 p.m. until Dec. 15, 1971 at 10:00 A.M. (ampano, J.) m-12/16/1971.
	OVER

1971	PROCEEDINGS
12/15	Jury trial continues. Jury of 12 and 2 alternates present. Four
×	defendant witnesses sworn and testified. Def. Johnson rests at
	10:30 A.M. Def. White rests at 10:58 A.M. Def. Higley rests at 11:45 A.M.
	Motion of Def. Johnson to Dismiss Indictment for Lack of Speedy Trial-
	DENIED. Motion to Dismiss Count 6-GRANTED.Court adjourned at 2:00 p.m.
10/01	until Tuesday, December 1971 at 10:00 A.M. (Zampano, J.) m-12/16/1971.
12/21	Jury Trial continues: Jury of 12 and 2 alternates present. Summa-
	tions of counsel. Charge to Jury, Alternate jurors excused by the Court.
	Jury retires to deliberate at 1:55 p.m. Jury returned to Courtroom with following verdicts. Alphonse Johnson-GUILTY to Counts 1,2 and 3.
•	Rufus Higley- GUILTY to Counts 1,2, and 3. David J, White -GUILTY-
	to Counts 1,2, 3 and 7. Verdict verified and accepted by the Court.
	Jury excused. Same bonds to continue. Court adjourned (7ampano. J.)
10/02	m-12/23/19/1.
12/23	List of Witnesses and Jury Verdicts filed.
12/26	Motion for Judgment of Acquittal, filed by Defendant Johnson. Motion for New Trial, filed by Defendant Johnson.
1971	The street of belendant Johnson.
12/21	Marshal's return showing service, filed 3 Subpoenas to Testify.
12/21	Marshal's returns showing non-est, filed 3 Subpoenas to Testify.
1972	
1/12	Defendant Johnson's Motion For Judgment of Acquittal and Def. John-
1/13	son's Motion For New Trial -DENIED. (Zampano, J.) m-1/13/1972. Endorsement entered on Def. Johnson's Motion For Judgment of
	Acquittal:"1/12/1972. Motion denied." Zappano, J.) m-1/14/1972. Copies
	Mailed Attys. Jones and Farrell.
1/13	Endorsement entered on Def. Johnson's Motion For New Trial:
	"1/12/1972. Motion denied." (Zampano.J.) m-1/14/1972. Copies mailed
1/26	Attys. Jones and Farrell.
1/26	Court Reporter's Notes of Proceedings held on Nov. 30 and Dec. 1st (Jury Trial -Motions), filed, (Russell, R.)
1/26	Court Reporter's Notes of Proceedings held on December 2 and 3;
	December 6 and 7: December 8 and 9. 1971, hearings on Motions (Higley &
	Johnson), filed. (Russell, R.)
1/26	Court Reporter's Notes of Proceedings held on December, 9, 10 to 13,
1/26	14 and 15, 1971; (continuance of Jury Trial), filed. (Russell, R.)
	Court Reporter's Notes of Froceedings held on December 21, 1971 (Jury Trial and verdict), filed. (Russell, R.)
· •	Court Reporter's Notes of proceedings held on Oct. 26, 1971, filed.
- 2/20	Motions (Russell, R.)
2/10	DISPOSITION-JOHNSON- 19 years imprisonment. Court informs defendant
	of his right to appeal. Court recommends imprisonment in an institution
	other than where Rufus Higley and David J. White are incarcerated and every effort should be made to keep them separated during the term of
	imprisonment. (Zampano, J.) m-2/10/72.
2/1.0	Judgment and Commitment filed and entered. (Zampano.J.) m-2/10/72.
	Three certified copies handed U.S. Marshal for service. DEF. JOHNSON.
2/10	DISPOSITION: Def. HIGLEY- Sixteen years imprisonment.Court informs
-	defendant of his right to appeal. Court strongly recommends incarceration
	at an institution other than where Alphonse Johnson and David White are incarcerated and every effort should be made to keep them separated
	during the term of imprisonment. (Zampano, J.) m-2/10/72.
2/10	· Judgment and Commitment for Def. HIGLEY, filed and entered. (Zampano,
	J.) m-2/10/72. Three certified copies handed U.S. Marshal for service.
	CONTINUED

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U.S.A.	vs. JOHNSON, HIGLEY and WHITE PAGE FIVE CRIMINAL NO. 12,963
DATE	PROCEEDINGS
1972	
2/10	DISPOSITION-WHITE: Seventeen years imprisonment. Five years impris-
	priment on count /. Sentence on Ct. / to run concurrently with the 17
	year sentence. Court informs defendant of his right to appeal Notice
	of Appeal filed by defendant. Court recommends imprisonment in an
	institution other than where Alphonse Johnson and Rufus Higley are
	incarcerated and every effort should be made to keep them separated
	during the term of imprisonment. (Zampano, J.) m-2/10/72.
2/10	Judgment and Commitment filed re: Def. White. (Zampano, J.) m-2/10/72
	Three certified copies handed U.S. Marshal for service.
2/10	Copies of Notice of Appeal mailed Attys. Jones, Mirto and defendat.
	Certified copy of docket entries and Notice of Appeal mailed Clerk,
	U.S. Court of Appeals.
2/10	
	Endorsement Order entered on Notice of Appeal filed by Defendant
	White: "This appeal may proceed in forma pauperis." (Zampano, J.) Feb. 10, 1972. m-2/10/72.
2/14	Notice of Appeal filed by defendant RUFUS HIGLEY. Copiesmailed
	Abbar To ITiis of the Copiesmailed
	Attys. Jones, Whitney and defendant. Certified cppy of Notice and
2/15	of docket entries mailed Clerk, U.S. Court of Appeals.
2/15	Court Reporter's Notes of Proceedings (Dispositions) re all three
	defendants (On February 10, 1972), filed, Russell, R. Notice of Appeal, filed by defendant JOHNSON. Certified copy of docket sheet
2/15	Notice of Appeal, filed by defendant JOHNSON. Certified copy of docket sheet
	and Notice of Appeal, mailed to Clerk, U.S.C.A. Copies of Notice of Appeal, mailed
	to counsel.
2/17	Marshal's Return Showing Service, filed - Judgment & Commitment re HIGLEY.
2/17	Marshal's Return Showing Service, filed - Judgment & Commitment re JOHNSON.
2/23	JOHNSON: Following endorsement on defendant's Notice of Appeal and Motion to
	Proceed in Forma Pauperis on Appeal: Motion to proceed in forma pauperis on appeal
	is granted. The appeal is not frivolous. Zampano, J. m-2/23/72. Copies mailed to
	counsel.
3/2	JOHNSON: CJA Form 21 filed requesting transcript for appeal purposes, same
	approved by the Court in forms pauperis and copies distributed.
3/2	WHITE: CJA Form 21 filed requesting transcript for appeal purposes, same
	approved by the Court in forma pauperis and copies distributed.
3/6	HIGLEY: CJA Form 21 filed requesting transcript for appeal purposes, same
	approved by the Court in forma pauperis and copies distributed.
3/16	JOHNSON: CJA Form 9 (Voucher for compensation to investigator Joseph Montesi,
	Sr.) duly executed and approved (Zampano, J.) and mailed to Adm. Off. for payment.
3/21	Record on Appeal mailed U.S. Court of Appeals. Copies of Index
	and docket entries mailed Attus: Jones Whitney Winte and Revertil
3/27	and docket entries mailed Attys. Jones, Whitney, Mirto and Farrell. Receipt for Record on Appeal received from U.S. Court of Appeals.
4/7	Court Reporter's Transcripts of proceedings held on May 24, Nov. 30, December
	1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15 and 21 (Trial) (14 Volumes), filed. Russell, R.
4/11	Supplement to Record on Appeal sent U.S. Court of Appeals. Copies of Index
	mailed counsel of record.
4/14	
4/17	Receipt for Supplement to Record on Appeal received from U.S.C.A.
.,,,,	CJA Forms 21 for HIGLEY, JOHNSON & WHITE duly executed and approved by the
	Court (Zampano, J) for payment to Eugene J. Russell, Reporter, for trial transcript for appeal use, each in the amount of \$657.20. Copies distributed.
5/2	JOHNSON: Motion To Be Relieved as Counsel, filed by Gerald E. Farrell, Esq.
5/5	Memorandum of Position and Cold to Col
	Memorandum of Decision on Claims of Gerald Farrell, Ewq., Robert Mirto, Esq.
	the state of Limit Provided in Criminal
	Justice Act, filled and entered. Court allows FADDETT 62 750 00 4-1-1-1-
	The ve, 750.00, including expenses; whithey \$2,500.00, including expenses. Zampano I
	m-5/5/72. Copies mailed to counsel and to Judge Friendly for approval.

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1972 TE	PROCEEDINGS
5/8	Motion of Attorney Gerald E. Farrell to be Relieved as Counsel for defendant JOHNSON marked off, per defense counsel. Zampano, JM-5/8/72.
5/8	JOHNSON: Attorney Carald F. Farmallia Matter to be waltered as
	Attorney Gerald E. Farrell's Motion to be relieved as Counsel, endorsed as follows: "Motion off, by defense counsel." Zampano, J. m-5/9/72. Copies mailed to Counsel.
5/17	
3/1/	Court Reporter's Sound Recording of proceedings held on February 10
5/22	1972, filed. Disposition (Russell, R.) JOHNSON: CJA Form 4 executed, approved by the Court (Zampano, J.) a
· 11	mailed to A.O. for payment. HIGLEY: CJA Form 4 executed, approved by the Court (Zampano, J.) an
	mailed to A.O. for payment.
- 11	WHITE: CJA Form 4 executed, approved by the Court (Zampno, J.) and mailed to A.O. for payment.
5/24	JOHNSON: Order Denying Motion to Reduce Sentence, filed and entered, Court
3/24	construes letter of 5/15/72 from defendant as a motion pursuant to Rule 35 of the
	F.R.Crim.P. for reduction of sentence and ordered that defendant's motion be and is
	hereby denied. Zampano, J. m5/25/72. Copies mailed to counsel and petitioner.
8/9	Letter from Atty. Hugh Keefe stating that he will not file a claim voucher
	for representing deft. Higley. Copy to A.O.
10/30	Certified copy of Order and Opinion received from U. S. Court of Appeals
	AFFIRMING judgment of this court re defendants JOHNSON, HIGLEY & WHITE. m-10/30/72.
	Copy sent to U. S. Marshal in New Haven.
1973	
1/17	HIGLEY: Memorandum Order filed and entered. Court construes letter from petition
	dated 12-28-72 as a motion for reduction of sentence. Further request of petitioner for
	additional time to submit moving papers in support of his request, granted; the petitic
	time for filing supportive documents is extended to 2-20-73. (Zampeno, J.) m-1-18-73
275	Copy mailed to counsel.
3/5	HIGLEY: CJA Form 21 approving amount of \$60.00 for payment to Dr. Charles W.
216	McGuire for psychiatric examination, filed. (Zampano, J.) Copies distributed.
3/6	JOHNSON: Motion for Reduction of Sentence, filed by defendant. WHITE: Motion for Reduction of Sentence, filed by defendant.
3/6	WHITE: Certified copy of Order of Supreme Court denying petition for writ of
	certiorari. m-3/12/73. Certified copy sent to U. S. Marshal in New Haven.
3/12	JOPISON: Hearing held on Defendant's Motion for Reduction of Sentence, Decision Reserved. Zampano, J. m-3/12/73.
3/16	JOHNSON: Order Denying Motion to Reduce Sentence, filed and entered. Zampano,
	J. m-3/16/73. Copies mailed to counsel.
3/12	JOHNSON: Court Reporter's Notes of proceedings (Motion) held on
	March 12, 1973, filed. (Russell, R.)
3/26	WHITE: Defendant's Motion for Reduction of Sentence, over to 4/9/73. Zampano, J
	m-3/26/73.
4/4	WHITE: Court Reporter's Notes of proceedings held on March 26, 197
	filed. (Russell, R.)
4/9	WHITE: Hearing held on defendant's Motion for Reduction of Sentence, Motion
4/17	denied. Motion so endorsed. Zampano, J. m-4/10/73. Copies mailed to counsel.
4/17	WHITE: Court Reporter's Notes of proceedings held on April 9, 1973
5/29	(Motion), filed. Russell, R. JOHNSON: Motion for Modification of Sentence, filed by defendant.
6/4	JOHNSON: Motion for Modification of Sentence, filed by defendant. JOHNSON: Hearing on Motion for Modification of Sentence.
-0/4	
6/11	To be referred to Judge Zampano. Newman, J. m-6/4/73. JOHNSON: Hearing held on defendant's Motion for Modification of Sentence.
_6/11	Motion denied, as stated in open Court, and so endorsed. Zampano, J. m-6/11/73.
	Copies mailed to counsel.
	JUMISON: Court Reporter's Notes of proceedings held on 6/4/73, fi

U.S.A.	v. JOHNSON, HIGLEY and WHITE PAGE SIX CRIMINAL NO. 12,963
DATE	. PROCEEDINGS
1973	
7/9	Court Reporter's Notes of proceedings held on June 11, 1973
	(Motion), filed. Russell, R.
7/9	JOHNSON: Certified copy of Order of Supreme Court denying
	petition for writ of certiorari, filed. m-7/9/73. Copy sent
7/25	U. S. Marshal at New Haven.
	WHITE: Order Denying Motion to Reduce Sentence, filed and entered. Court construes letter from defendant dated 6/25/73 as
	motion pursuant to Rule 35 of Federal Rules of Criminal Procedure
	for reduction of sentence. Zampano, J. m-7/25/73. Copies mailed
7/25	to counsel and petitioner.
	JOHNSON: Order Denying Motion to Reduce Sentence, filed and entered. Zampano, J. m-7/26/73. Copies mailed to counsel
	and petitioner.
9/24	Government Exhibits 1, 2, 3, 5, 6, 7, 8, 8B, 9, 10A, C, D & F,
	11, 12-A & B, 13, 14, 15A & B, 16, 17, 18, 19, 20, 21A & B, 22, 23,
	24, 25, 26, 27, 28, 29, 30, 31A, B, C & E, 33, 34, 35A-C, 37, 38, 39,
	40 and 41 returned to U.S. Attorney at New Haven and receipt for same, filed.
10/18	Government's Motion for Permission to Dispose of Evidence (gun),
	filed. Motion granted. Zampano, J. m-10/19/73. Copies mailed to
1974	counsel.
2/7	JOHNSON: Order Denying Motion for Amended Sentence, filed.
	and entered. Court denies defendant's pro se motion of 10/31/73
	requesting modification of sentence. Zampano, 1. m-2/7/74. Copies sent
2/1/	to counsel and defendant.
_3/14	JOHNSON: Motion for reconsideration of denial of application for modification of sentence, filed by the defendant pro se.
8/23	JOHNSON: Order Denying Motion for Amendment of Sentence, filed and entered.
	Ordered's that defendant's motion for amendment of sentence to include a Section
	4208(a)(2) provision is denied. Zampano, J. m-8/23/74/ Copies mailed to counsel and
9/16	defendant. JOHNSON: Motion for Reconsideration, filed by defendant.
9/17	JOHNSON: Following endorsement on defendant's motion for reconsideration (pr0
	se): Denied. Zampano, J. m-9/18/74. Copies mailed to counsel and defedant
11/11	JOHNSON: Defendant's pro se Petition for Rehearing of motion
	for correction and reduction of sentence, filed.
11/11	
	"Petition denied." Zampano, J. m-11/12/74. Copies mailed to counsel and defendant.
11/25	JOHNSON, HIGLEY, WHITE: Records returned from U.S. Court of
	appeals. Receipt acknowledged.
11/27	JOHNSON: Notice of Appeal filed. Affidavit of Poverty and
	Motion For Leave to Proceed in Forma Pauperis, filed. 'Motion For
7	Leave In Forma Pauperis granted. Zampano, J. M-11-27-74. Copies
12/2	JOHNSON: Copies of Notice of Appeal and Docket entries sent
	to U.S. Court of Appeals, and Copy of Motion For Leave to Proceed in
12/16	FormanPauperis. Record on Appeal sent U.S. Court of Appeals. Copies of Index
	sent Mr. Dorsey and Mr. Johnson.
12/23	Receipt for Index to Record on Appeal received from Clerk,
	U.S.C.A. re: JOHNSON.

DATE 1975	PROCEEDINGS
1/27 2/7/75	Copy of Brief concerning appeals case, filed by defendant. JOHNSON: Court Reporter's Transcript of Proceedings (Disposition) held on February 10, 1972, filed.
2/27	HIGLEY: Court Reporter's Transcript, of Proceedings (Disposition) held on February 10, 1972, filed. Russell, R. WHITE: Court Reporter's Transcript of Proceedings (Disposition
2/27	WHITE: Court Reporter's Transcript of Proceedings (Disposition held on February 10, 1972, filed. Russell, R.
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UNITED STATES DISTRICT COURT

FILED

DISTRICT OF CONNECTICUT

OCT 21 4:38 PM '74 U.S. District Court New Haven, Conn.

ALPHONSE JOHNSON

v.

CIVIL NO. N-74-245

UNITED STATES OF AMERICA :

RULING ON DEFENDANT'S MOTION PURSUANT TO 18 U.S.C. § 2255

The petitioner, Alphonse Jchnson, convicted of bank robbery and sentenced to 19 years imprisonment by this Court on February 10, 1972, moves under 18 U.S.C. § 2255 to have his sentence vacated. He contends that the Court erred when at the time of sentencing it failed to make an affirmative explicit finding that the petitioner would not derive a benefit from treatment under the Youth Corrections Act, 18 U.S.C. § 5010(d).

Since the petitioner was 22 years of age when he was convicted and 23 years old when sentenced, he was a young adult offender and not a youth offender. See 18 U.S.C. \$5006(e). Therefore, an express finding of "no benefit" under the Act was not required. United States v. Kaylor, 491 F.2d 1133 (2 Cir. 1974).

Accordingly, the motion is denied; the papers may be filed without fee.

Dated at New Haven, Connecticut, this 17th day of October, 1974.

Robert C. Zampano
United States District Judge

UNITED STATES DISTRICT COURT

FILED

DISTRICT OF CONNECTICUT

OCT 23 9:50 AM '74 U.S. District Court New Haven, Connecticut

ALPHONSE JOHNSON

V.

:

CIVIL NO. N-74-245

UNITED STATES OF AMERICA :

JUDGMENT

This cause came on for consideration on a Motion Pursuant to 18 U.S.C. § 2255, to vacate sentence, and the Court filed its ruling thereon under date of October 21, 1974, denying the said motion,

It is accordingly ORDERED, ADJUDGED AND DECREED that judgment be and is hereby entered, dismissing the Motion to Vacate Sentence.

Dated at New Haven, Connecticut, this 23rd day of October, 1974.

Sylvester A. Markowski Clerk, United States District Court

By /s/ Frances J. Consiglio
Deputy-in-Charge

Filed Nov 11 8:14 a.m.'74 U.S. District Court New Haven, Conn.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

ALPHONSE JOHNSON,

Petitioner

VS

Criminal No. 12963

UNITED STATES OF AMERICA,

Respondent :

PETITION FOR REHEARING

NOW COMES, Alphonse Johnson, Petitioner, Pro-Se, and respectfully moves this Honorable Court in the above captioned manner for correction and reduction of sentence because of and for the following reasons:

- 1. The Petitioner Johnson, filed a motion in this Honorable Court on or about September 23, 1974, for a Correction or Reduction of Sentence, pursuant, in particularly, to DOUGLAS DORSZYNSKI v. UNITED STATES (No. 73-5284).
- 2. The Petitioner's motion was correctly denied on or about the 17th day of October, 1974.
- 3. The Petitioner admits that he erronously stated in that motion that he was 22 years old. The Petitioner submits that he was, in fact, 23 years old.
- 4. However, the Petitioner is now alleging upon Motion for Rehearing that as a Young Adult Offender, 18 U.S.C. §4209, he was eligible by virtue of his

age, for the treatment provided under the Federal Corrections Act, 18 U.S.C. §5005 et. seg., and could have been sentenced pursuant to its provisions. See: United States vs. Schwarz,

500 F.2d 1350 (1974).

WHEREFORE,

Petitioner Johnson, respectfully moves this Honorable Court, pursuant to <u>United States vs. Schwarz (Supra)</u>, to correct or reduce his sentence.

Respectfully submitted,

/s/
Alphonse Johnson, Petitioner Pro-Se
P.O. Box 1000
Marion, Illinois 62959

11/11/74
Petition denied
R.C. Zampano
U.S.D.J.

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MR. MAXWELL: The next matter is United
States versus Johnson. The matter's here for disposition.

MR. FARRELL: Good morning, your Honor.

THE COURT: Good morning, Mr. Farrell.

MR. FARRELL: I certainly don't want to go into the facts of the case; your Honor sat on the case and it's not that long ago.

Speaking with Mr. Rendino, I'm aware that this presentence report goes heavily into the sociological aspect of Mr. Johnson's background, and his background is one which culturally, educationally and in every other way indicates deprivation. He just didn't have the chance in society that many other people have.

Now, certainly, I don't cite these lack of the better things of life as an excuse, but only as in mitigation to help understand the type of person that Mr. Johnson is.

Mr. Johnson's only 23 years old, your Honor, and he has a serious record, criminal record, up until this point, but the question which arises in my mind is, can a 23-year-old man just be thrown on the junk heap and be declared absolutely useless to society, and with no chance of rehabilitation at all.

Now, he's been in prison before, he's been in state prison, but the state prisons in Connecticut lack

good vocational programs, they're overcrowded, you don't get much assistance, and the recidivism percentages show that you really don't come out much better from state prisons. The question, of course, is, is the federal system any better. Well, seemingly, right now it's not, but in the years to come, hopefully, with the prodding of the Attorney General — and Chief Justice Warren Burger seems to indicate that he intends to prod the system to become better. I think it can be hoped that programs for vocational assistance and rehabilitation would improve and Mr. Johnson in prison would receive the type of vocational care and psychological help that he probably needs.

Mr. Johnson is not totally without some good aspects to his character. I think he has great leader—ship and charisma. Now, these can be useful aspects of a character in society. If he could learn to curb his criminal tendencies. Now, in criminal planning he seems totally lacking, and if he was out and committed crimes again I think there's no doubt he'd be caught again. So far as a danger to society in him leading a successful criminal life, it doesn't seem to be possible. But I do feel that there's other aspects could make him a useful citizen to society.

Now, he certainly is not in the category of

SANDERS, GALE & RUSSELL CERTIFIED STENOTYPE REPORTERS

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an Eddy Devlin or an Eddy Reid, who made their whole life earning out of crime. He could have gone other routes and chose to be criminal. The United States District Court chose to give an Eddy Devlin 30 years. This man probably was involved in 15 or 20 bank robberies, and Mr. Johnson with his background, the circumstances and the mitigating factors which I cited to the Court really shouldn't be considered in his category. I really don't think he's half the criminal someone like that ever thought of being. I really don't feel he deserves more than half the sentence Mr. Devlin got.

I think that Mr. Johnson has built a hard shell. He's a tough character. And I ask the Court to pause in sentencing him and reflect on the type of brutalizing experiences he had in his background that turned him into this hard shell. And he's a man like anybody else, and he may stand up here and he's not going to let it show the Court that all these years are going to hurt and break his spirit. It will. And I ask the Court to have some mercy on him .

THE COURT: Mr. Johnson, would you like to say anything in your own behalf?

THE DEFENDANT: No, sir.

THE COURT: Well, of course, I heard the

you guilty. What I said to Mr. White is equally applicable to you. That the case certainly falls within the 25 year statute that Congress had in mind when they passed it.

Moreover, there is not very much in the presentence report that mitigates punishment. The prior record, of course, is something you know all about, so I won't go through it, but it runs over two pages and you have served time in state prison.

Under all the circumstances, based on all the facts as I heard them at trial and the presentence report and what your attorney had to say, it is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of 19 years.

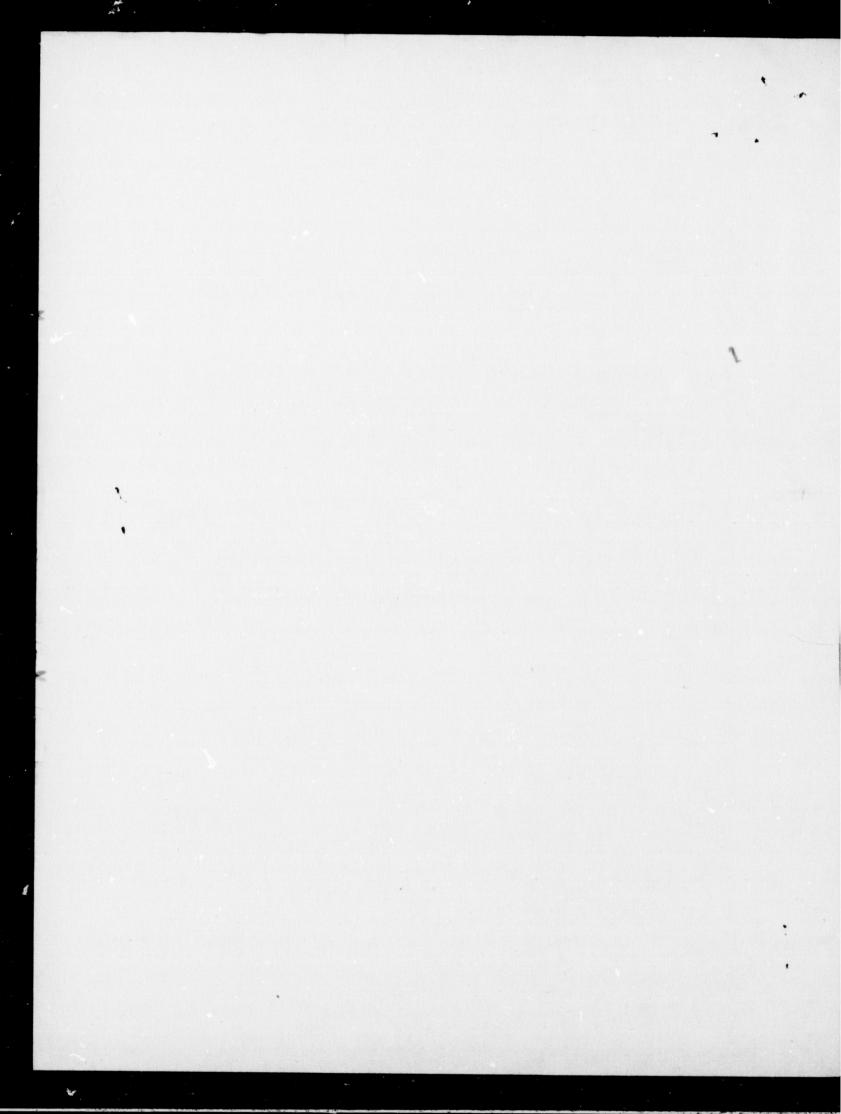
You have been found guilty after a jury trial, Mr. Johnson, you have a right to appeal. If you are unable to pay the cost of an appeal, you may apply for leave to appeal in forma pauperis. If you desire to appeal you must notify the clerk of this court within 10 days, and the clerk will prepare and file a notice in your behalf. I am sure Mr. Farrell, who is a very experienced trial lawyer, and has had many appeals, will advise you on the proper way of filing the notice.

In any event, you may apply yourself to

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Second Circuit, that in all probability this case will be heard on submission.

Respectfully submitted,

PETER C. DORSEY
UNITED STATES ATTORNEY
DISTRICT OF CONNECTICUT
P.O. BOX 394
BRIDGEPORT, CONNECTICUT 06601

By: THOMAS F. MAXWELL, JR.
ASSISTANT UNITED STATES ATTORNEY

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Appellee's Motion for Leave to Proceed by Way of Six Xerox Copies has been forwarded this 13th day of March, 1975, to: Alphonse Johnson, United States Penitentiary, Marion, Illinois 62959.

THOMAS F. MAXWELL, JR.

ASSISTANT UNITED STATES ATTORNEY